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Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 02554

In the Matter of	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers	)	

RESPONSIVE COMMENTS OF THE WESTLINK COMPANY ("WESTLINK")

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I.

GENERAL INTRODUCTION

Westlink's initial Comments herein argued that "bill and keep" may be an appropriate form of mutual compensation as between LECs and two-way CMRS providers. For one-way CMRS providers, however, "bill and keep" in no way complies with the mutual compensation rule, since the LECs would bill and keep all the money, while the paging carriers continue to do much of the work.

While there may have been some debate as to whether prior pronouncements in favor of mutual compensation applied to intrastate traffic - and Westlink believes that they did so apply - there is no question about the impact of the Telecommunications Act of 1996 ("Act of 1996").

The Act of 1996 (Sections 251b(5), 252d(2)(A)(i)) makes "mutual compensation" mandatory, unless the parties mutually agree otherwise.

LEC respondents agree - albeit sotto voce. Pacific Bell, for example, concedes that mutual compensation is the law of the land, and that current LEC/CMRS agreements must be renegotiated. (Pacific Comments at p.iii). But like its sister companies, Pacific Bell advances every conceivable reason for delaying the inevitable. The LECs focus particularly on the "unfairness" of "bill and keep" as it would apply to two-way CMRS providers, claiming that the current 75:25 ratio of mobile-originated to land-originated calls would wreak havoc if the LECs were forced to terminate mobile-originated calls without charge.

What the LECs overlook is that every argument advanced by them against "bill and keep" in a two-way context argues for the immediate implementation of mutual compensation in the paging context. One hundred percent of paging traffic is completed on CMRS systems. Nearly all of this traffic is billed by the LECs to their own subscribers at rates which assume that the LEC is performing the termination function, even though the paging carrier is responsible for transporting and for terminating these calls. The LECs themselves collect from IXCs, CMRS providers, and competitive local carriers ("CLCs") when they perform these functions. The Act of 1996 now makes it clear beyond question that the compensation ought to go the other way when the traffic is reversed.

Consistent with its initial Comments, Westlink will focus on the LECs with which it must deal in the western states. It will examine the responses of each (Section II) and will touch on the jurisdictional issues raised by nearly all parties (Section III), before concluding with an

appeal for immediate action by this Commission to redress the longstanding inequality imposed by LECs and IXCs on the paging industry.

II.

THE LECs CONFIRM THAT EXISTING ARRANGEMENTS DO NOT PROVIDE MUTUAL COMPENSATION TO CMRS PROVIDERS

A. Pacific Bell:

Pacific Bell claims to support mutual compensation, and at p.5 of its Comments repeats, with approval, this Commission's rule:

> "This principle requires LECs to compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities. Similarly, CMRS providers are required to provide such compensation to LECs in connection with wireless originated traffic terminating on LEC facilities."

Having agreed that "change is needed in the framework for LEC to CMRS interconnection", Pacific Bell proceeds to invoke every conceivable reason for avoiding change. For example:

- "The recent enactment of the... [Act of 1996] has removed the legal basis of this proceeding..." Pacific Comments at p. 1.
- "It will take time to implement the change from our existing arrangements to Mutual Compensation because we anticipate that our end users will face rate revisions ..." Pacific Comments at p. 7.
- "Existing arrangements are reasonable ..." Pacific Comments at p. 26.
- "There is no urgency to revise these arrangements." Pacific Comments at p. 8.

- "The Commission should...[allow] existing contractual arrangements for LEC-to-CMRS interconnection to stay in place for the duration of the contracts." Pacific Comments at p. 25.

- "No complaints have been filed against us concerning these arrangements before either this Commission or the state commissions." Pacific Comments at p. 27.

What is most interesting is what Pacific Bell does not say. In baldly stating that the Act of 1996 renders this proceeding moot, Pacific blithely ignores the fact that the Act makes "mutual compensation" the law for both intrastate and interstate traffic. See Act of 1996, §251. The Act also endows this Commission with the responsibility to promulgate particular guidelines for implementing "mutual compensation" and the other interconnect-related provisions of the Act. See Act of 1996, § 251 d(1). Far from rendering this proceeding irrelevant, the Act of 1996 gives it new, and critical, importance.

Pacific says little about its recently negotiated contract with Metropolitan Fiber Systems ("MFS"). See Westlink's initial Comments at p. 11; NPRM at note 71. Given that Pacific has now conceded the appropriateness of a $0.075 - $0.087 termination charge for traffic exchanged between it and MFS, how can it rationally deny the same compensation to paging carriers when they terminate the calls placed by Pacific's customers?

Indeed, while Pacific is quite vocal about the alleged characteristics of cellular traffic, it is conspicuously reticent about the nature of paging traffic. Pacific says nothing about the fact that 100% of paging calls are revenue producing to Pacific, even though they are terminated on CMRS systems. For Pacific does "bill and keep" for these calls. Pacific's rates are calculated by reference to state approved tariffs which assume full performance by the LEC of origination,

transport, and termination functions. While Pacific freely and repeatedly predicts utter catastrophe if it is forced to terminate mobile originated calls without additional compensation, it says nothing about the fact that paging carrier for decades have been completing land originated calls - and have been paying Pacific for the privilege of doing so.

Then there are the matters about which Pacific is either very misleading or flatly wrong. Two examples should suffice. Pacific implies that its existing interconnection arrangements are based on a long run incremental cost ("LRIC") analysis. (Pacific Comments at pp. 44-48). Yet by order of the California Public Utilities Commission ("CPUC"), current paging interconnection cost studies must be based on direct embedded costs ("DEC"). CPUC Decision 92-01-016. Given the universal support in this proceeding for LRIC as the appropriate measure, this fact alone argues for an immediate revision of Pacific's current rates. See NPRM paragraphs 47 et seq. Pacific also says that there have been no complaints against it at the CPUC relating to its CMRS interconnect regime. (Pacific Comments at p.27) The statement is simply untrue. Without even mentioning past disputes, the fact is that at least a half dozen parties have protested the tariffs filed by Pacific in response to the CPUC's Order. See CPUC D.94-04-085 and proceedings in connection with Pacific's Application 92-06-009. These protests have never been resolved, and the current interconnection arrangements are by their terms - as well as by order of the CPUC - interim in nature.

This brings Westlink to Pacific's most egregious attempt to mislead. Pacific implies that California's paging carriers have five-year contracts with Pacific, and that these contracts must remain in effect irrespective of the Act of 1996, and the outcome of this proceeding. See Pacific's Comments at p. 108.

The fact is that existing arrangements are by their terms provisional:

> "Pacific offers to provide the services described herein pursuant to this Agreement unless or until a government agency of competent jurisdiction rules to the contrary or until such time as Pacific has effective tariffs on file with the California PUC ... " See Paging and Mobile Interconnection Agreement, p. 2, attached hereto as Exhibit A.

The above language stems from continuing disputes between Pacific and the CMRS industry, both one-way and two-way, over questions like NXX charges, routing and rating procedures, mutual code recognition, and mutual compensation. All of these disputes are described in extensive filings at the CPUC. The reference to "five-year contracts" is also misleading. While there is a five-year pricing option available to paging carriers, very few entities have availed themselves of the option, and all paging companies have signed agreements subject to the qualifying language quoted above.

Westlink takes particular notice of the letter from Mr. D. M. Byrkit sent to various cellular carriers on March 1, 1996, and attached as Exhibit A to Pacific's Comments. Mr. Byrkit, who is Vice President of Pacific's Industry Markets Group (Wireless Carriers), states that Pacific favors a mutual compensation approach, and that "we recognize that our existing wireless connection agreements will require changes to meet this goal." On or about the same time, Pacific stated publicly in several forums that existing LM-2 and LP-2 arrangements would no longer be honored by Pacific due to the advent of resellers and other CLCs which will assumedly capture the loyalty of many Pacific subscribers whose calls are now routed and rated pursuant to Pacific's existing CMRS interconnect agreements.

It is unfortunate that Mr. Byrkit's letter was not sent to representatives of the paging industry, which, if anything, have far more to be aggrieved about with regard to the status quo.

The fact is that mutual compensation is now the law of the land. The fact is that the conceptual underpinning for existing tandem interconnect arrangements - that Pacific has the power to direct calls from all telephone numbers in specified NXXs - is no longer the case. The fact is that existing arrangement must be revised, and that one-way carriers in particular are entitled to new contracts.

B. US WEST:

US WEST is far more ambiguous in its endorsement of mutual compensation. At p. 20 of its Comments, US WEST states that:

> "It bears remembering at the outset that the Commission's mutual compensation rule applies to interstate traffic only. In this regard, the Commission reaffirmed only last year that it has no jurisdiction over LEC-CMRS intrastate traffic [emphasis in original]."

Westlink does not agree that the Commission's mutual compensation rule was ever confined to interstate traffic. Even prior to the Act of 1996, CMRS providers had a right to fair and reasonable interconnection. 47 U.S.C. §201; NPRM paragraph 14. They also had a statutory right to non-discriminatory interconnection terms. Where LECs insist on being paid for terminating CMRS-originated calls, the rule of reason, as well as the anti-discrimination provisions of the Communications Act of 1934 (47 U.S.C. §201) require comparable treatment when CMRS providers terminate land originated calls. The same is true, a fortiorari, when carriers like Pacific Bell and Ameritech enter into mutual compensation arrangements with other telecommunications service providers. If Pacific Bell and MFS compensate each other for exchanging traffic, the CMRS carriers have a right, even under the law before 1996, to

comparable arrangements when they perform comparable functions.[1] See NPRM at paragraph 21.

Moreover, regardless of what the rule was prior to 1996, the Act of 1996 has totally changed the landscape. Under §252(d)(2), mutual compensation is the standard for all interconnect arrangements, and under §251(d)(1), this Commission has the obligation to implement the legislation's direction. The issue, in other words, is not whether US WEST was obligated to provide mutual compensation in the past, but is rather whether it is now required to provide it under §252(d)(2).

US WEST does not deny that it has declined in the past to enter into mutual compensation arrangements, offering as justification that "only one CMRS provider ... ever filed a complaint about the absence of mutual compensation." For the present, US WEST in fact quotes §252(d)(2), stating that the Section "requires mutual compensation for all new interconnection arrangements between co-carriers [emphasis added]." The implication seems to be that existing agreements are somehow exempt from the Act of 1996, and that US WEST for this or other reasons ought to be relieved of its statutory obligation to enter into mutual compensation arrangements.

The argument here becomes somewhat hard to follow. US WEST states more than once that its present arrangements with CMRS carriers (under which the money only goes in one direction) are enormously profitable, and that its end users will suffer if they are changed. US WEST also seems to contend that interconnection rights are more valuable to small carriers than

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[1] In this regard, Westlink agrees with US WEST that "functionally equivalent services... should be available [as between connecting carriers] at the same prices." US WEST Comments at page v.

to large ones, and that smaller entities ought therefore to pay more than larger ones for services that are functionally the same.

The fact is, of course, that Congress, if anything, has imposed greater obligations on LECs than on small carriers. See for example Act of 1996, §251(c)(b). It is also the fact that Congress has made no distinction between the two categories when it comes to mutual compensation. The fact - as US WEST concedes - is that in an interconnection context, all carriers represent an access bottleneck to each other. The cooperation of all carriers is accordingly necessary for the functioning of the public switched network.

US WEST must take the good with the bad. Talk of "investor expectations" (US WEST Comments at p. v) and lost income must be balanced against the very real benefits which US WEST receives from an interconnected PSTN in general, and from the Act of 1996 specifically. If US WEST may charge 2.45 cents per minute for terminating CMRS-originated calls on a Type 2A basis, and 2.06 cents on a Type 2B basis, fairness - and the law - require equivalent payments by US WEST when its subscribers call paging numbers.

C. GENERAL TELEPHONE ("GTE"):

GTE (at p. iv of its Comments) urges a "rational pricing structure which permits every carrier to recover the costs of terminating traffic from the parties which originate it". Having begun in this reasonable manner, GTE proceeds to urge every conceivable reason for the Commission to avoid putting such a rational pricing structure into place. For example, GTE wishes to terminate this proceeding, and to reconsider CMRS/LEC issues in connection with "broader and more far-reaching changes". (GTE Comments at p.4). There are even references to GTE's allegedly constitutional right to retain the status quo. (GTE Comments at pp.13-14).

However, certain things cannot be avoided. GTE concedes its obligation under the Act of 1996 to "establish reciprocal compensation arrangements for the transport and termination of telecommunications". §251(b)(5). GTE Comments at p. 8. It also concedes this Commission's role under §251(d)(1) to establish basic regulations regarding the interconnection requirements of the Act of 1996. Id. Finally, GTE acknowledges the congressional directive that for interconnection arrangement to be just and reasonable, they must include a provision for "the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier ..." Act of 1996, §252(d)(2)(A). GTE Comments at p.9.

These concessions made, GTE focuses on "bill and keep" as its would apply to two-way CMRS providers and strenuously argues that the Act of 1996 does not permit the Commission at this time to mandate bill and keep. But, in its eagerness to defeat "bill and keep", GTE effectively concedes the essentials of Westlink's argument as to the one-way industry. Mutual compensation is now a matter of law. Whatever the extent of the states' jurisdiction, they may not approve (unless by the mutual consent of the parties) any interconnect regime which denies mutual compensation to CMRS providers. Paging carriers are CMRS providers. Paging carriers are not now being paid for the same functions which, performed by LECs, have entitled them to substantial compensation. All of this being true, this Commission has the power to declare that the existing arrangements between LECs and one-way CMRS providers are unlawful, and that they must be replaced by an acceptable form of mutual compensation as soon as practicable.

III.

CMRS/IXC RELATIONSHIPS

The NPRM at paragraph 116 properly (though tentatively) concluded that CMRS providers should recover access charges from IXCs when they perform functions that are analogous to those of the LECs. The anti-discrimination provisions of the Act of 1996, combined with the present access charge regime for LECs, the similarity of the end office and other functions performed by CMRS carriers, and the erosion of the distinction between LECs and IXCs all argue for equal treatment by IXCs of CMRS providers.

MCI agrees in principle, but argues disingenuously (at p. 16 of its Comments) that CMRS providers should not be compensated by the IXC where they receive compensation for airtime from their own subscribers. Of course, all CMRS providers bill their customers directly or indirectly for airtime ----- airtime is after all their stock in trade. This does not take away from the fact that paging carriers in particular assume IXC functions when they terminate calls originated by IXC customers. The law mandates mutual compensation in such circumstances; it does not permit the originating carrier to escape its obligation to pay CMRS providers when they accept and terminate calls from IXCs by inquiring into the costs which a particular CMRS rate is designed to recover. Paging service in most cases is flat-rated which means that the carrier will not generally recover additional subscriber revenues when it accepts and terminates calls from IXCs.

Westlink agrees with the Personal Communications Industry Association ("PCIA") insofar as it distinguishes the situation where the paging carrier is directly connected with the IXC from that where the connection occurs through an LEC. In the latter case, access charges should be

shared by the LEC and the paging carrier. In the direct connect situation, the charge should be paid directly to the CMRS provider.

IV.

CONCLUSION

There is no longer any question. The Act of 1996 has made mutual compensation mandatory, and has recognized "bill and keep" as a viable alternative for achieving the mutual compensation goal. The Act does not, however, require "bill and keep" for all CMRS providers. Indeed, such a rule for paging carriers would effectively strip them of their statutory rights.

For reasons described here and in Westlink's initial Comments (pp. 19 et. seq.), this Commission has the jurisdiction and responsibility (irrespective of subsidiary questions about state jurisdiction) to impose a mutual compensation rule on LECs and IXCs when they terminate their own traffic on one-way paging system. Given the long years of neglect by the landline carriers of their duties in this regard, the Commission should act forthwith.

Respectfully submitted,

THE WESTLINK COMPANY

By: _____
David M. Wilson
YOUNG, VOGL, HARLICK,
WILSON & SIMPSON, LLP
Its: Attorneys

EXHIBIT A

PAGING AND MOBILE INTERCONNECTION AGREEMENT

This AGREEMENT, dated _____, 1995 is by and between PACIFIC BELL, a California corporation (hereinafter referred to as ("Pacific") and _____, a _____ corporation, hereinafter referred to as ("Carrier").

WHEREAS, Pacific is a duly authorized carrier by wire and radio engaged in providing telecommunications service in the State of California; and

WHEREAS, Carrier holds authority from the Federal Communications Commission and/or the California Public Utilities Commission to provide paging and/or mobile services in the State of California; and

WHEREAS, Pacific and Carrier have agreed to connect their facilities and interchange traffic for the provision of through communications service by means of facilities and services which, in large part, are not presently tariffed; and

WHEREAS, Pacific and Carrier desire to enter into a mutually beneficial arrangement which will permit Pacific to provide interconnection facilities and services at cost-based rates and under conditions as provided herein and in the Attachments appended hereto.

WHEREAS, Pacific offers to provide the services described herein pursuant to this Agreement unless or until a governmental agency of competent jurisdiction rules to the contrary or unless or until such time as Pacific has effective tariffs on file with the CAL. P.U.C. for all or part of the services provided hereunder; and

WHEREAS, Pacific agrees, unless a governmental agency of competent jurisdiction rules to the contrary, that the rates and charges and terms and conditions for services provided hereunder will not be less advantageous to Carrier than those offered to any other paging and/or mobile communications radio carrier for comparable interconnect agreements executed during the term of this Agreement.

WHEREAS, During the life of this Agreement, should Pacific be authorized by the CPUC to tariff Paging and/or Mobile service, Pacific agrees to file a tariff that embodies the rates, terms, and conditions represented within this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, Pacific and Carrier hereby covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement and as used herein, the terms set forth below shall be defined as follows:

CERTIFICATE OF SERVICE

I, Phyllis Martin, hereby certify that copies of the foregoing Reply Comments of The Westlink Company in CC Docket No. 95-185 have been served this 25th day of March, 1996, by first-class United States mail, postage prepaid, on the following parties listed on the attached list.

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